

**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

**CRAWFORD C. MARTIN
ATTORNEY GENERAL**

January 11, 1968

Mrs. Bess Blackwell
Executive Secretary
State Board of Hairdressers
and Cosmetologists
Sam Houston Building
Austin, Texas 78701

Opinion No. M-191

Dear Mrs. Blackwell:

Re: Whether under Section 5-a
of Article 734-b, Vernon's
Penal Code, Junior Colleges
will be eligible for cos-
metology courses the same
as vocational high schools.

You request from this office an opinion as to the above captioned matter. You have also stated in your letter that the Board members have felt that junior colleges are not exempt under the above provisions, although public high schools are considered exempt and that presently the Texas Education Agency wishes to install cosmetology training courses in junior colleges.

Section 5(a) of Article 734b, Vernon's Penal Code, reads as follows:

"Sec. 5. (a) Any person, firm, association or corporation applying to the Board for an original certificate of registration or license, as a school of beauty culture, shall make such application in the form prescribed by the Board, giving the data and information required by the Board. The Board shall, in such applications, require such data, information and facts as it deems necessary to determine such applicant's compliance with this Act and his or its fitness to conduct and maintain such school. No applicant for an original school license shall hereafter be granted an original certificate of registration or license unless it shall have a building approved by the Board, having therein a minimum floor space of not less than three thousand, five hundred (3,500) square feet floor space in a modern

fireproof building of permanent type construction. Such space shall be divided into three (3) separate departments, viz: a theory classroom, a room for practical work for seniors, and a room for practical work for juniors, and shall have not less than two (2) modern, sanitary toilets in separate rooms where there are male and female students, and shall possess and have installed the minimum equipment and apparatus required by the Board, sufficient to properly train and fully instruct a minimum of fifty (50) students at one time in all subjects of its curriculum; and such schools shall thereafter maintain the premises and minimum equipment and apparatus; and such applicants shall furnish a good and sufficient surety bond payable to the State of Texas, conditioned to refund any unused portion of tuition paid if such school closes or ceases operation before courses of instruction have been completed. Provided, however, that the requirements as to floor space, type of building, bond requirement and number of licensed instructors shall not apply to Public Vocational Schools." (Emphasis added.)

The leading case upholding constitutionality of junior college districts is Shepherd v. San Jacinto Junior College District, 363 S.W.2d 742 (Tex.Sup. 1963). The Court in discussing the nature of junior college districts made the following observation at page 744:

"Some difficulty of classification has arisen with reference to junior colleges and the regional districts supporting them. Undoubtedly the framers of the Texas educational system envisioned a system of schools extending from those of an elementary grade to those of a university level, that is, elementary schools, secondary schools or high schools and colleges and universities. The junior colleges, developed for the most part since 1929, are sandwiched in, so to speak, between the high schools on one hand and the colleges or universities on the other hand. In certain respects, the junior college is what its name implies, that is, a school which is above the high school level yet one whose highest grade is below the educational level required for a degree from a university. Yet, as pointed out

by one of the briefs on file here, it would not be inappropriate to refer to the districts which support such schools as 'junior college districts' 'advanced independent school districts' or 'graduate high school districts.' The point of this is that junior colleges and their districts may in some instances be regarded as colleges and in other instances as schools in the nature of advanced high schools. The Junior College Act itself makes numerous references to independent school districts when delineating the powers and operations of a junior college district.

"The Texas junior college history bears some relation to the experience of other states with secondary schools, that is, high schools or college preparatory schools.

". . ." (Emphasis added.)

We may say that, dependent upon the curriculum any high school, junior college or university would be regarded as academic in some areas and vocational and technical in other areas.

A school of cosmetology is generally considered to be a vocational school as opposed to an academic school.

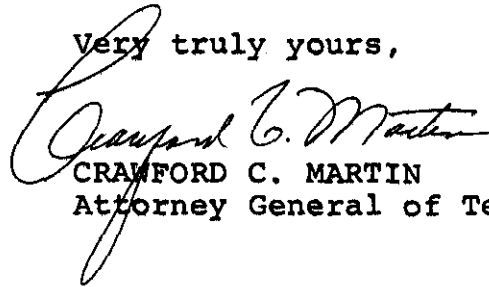
It is, therefore, the opinion of this office that junior colleges, which offer as a part of its curriculum, vocational instruction, fall within the proviso of Section 5-a of Article 734b, Vernon's Penal Code, and that the requirements as to floor space, type of building, bond requirement, number of licensed instructors, do not apply to such schools.

S U M M A R Y

The last sentence of Section 5a of Article 734b, Vernon's Penal Code, which provides an exception for public vocational schools, applies to junior colleges of this State, which offer vocational instruction as a part of their curriculum, since a junior college may provide in its curriculum for terminal vocational and technical courses as well as preparatory academic courses.

Mrs. Bess Blackwell, page 4, (M-191)

Very truly yours,



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Assistant Attorney General

APPROVED:
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